

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)
)
 v.) Criminal No. 09-313
)
EDWARD SICELOFF)

ORDER OF COURT

AND NOW, this 16th day of June, 2010, upon consideration of defendant's motion to dismiss the indictment for failure to state an offense (Document No. 37), IT IS ORDERED that defendant's motion be, and the same hereby is, **denied**.

As an initial matter, defendant's motion is untimely. At his arraignment, defendant was notified that all pretrial motions were to be filed within 10 days. One 30-day extension of time was granted upon motion filed by the Assistant Federal Public Defender representing him at the time, and pursuant to that extension, all pretrial motions were due by January 29, 2010. Defendant did not seek another extension and his time for filing pretrial motions long since has expired.

At the hearing on defendant's motion to proceed *pro se*, he was advised by the court that he was required to be familiar with and comply with the Federal Rules of Criminal Procedure and the local rules and he indicated that he understood those obligations.

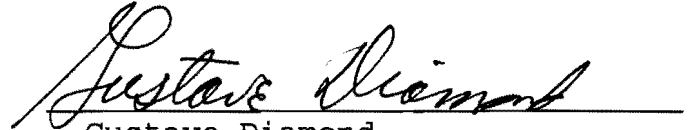
No special exception will be granted to defendant to permit him to file this pretrial motion out-of-time simply because he has chosen to proceed *pro se*.

Moreover, defendant already has filed three prior *pro se* motions seeking dismissal of the indictment against him, all of which were denied by the court. The court will not permit defendant to continue to file a new motion to dismiss each time the court denies a previous one. All arguments in favor of dismissal should have been raised in the same motion.

Finally, the argument that defendant makes in his pending motion, that he has not been charged with an offense, but rather with "violating a penalty," improperly was raised by defendant for the first time in his reply to the government's response to his last motion to dismiss. The purpose of a reply brief is to address points made by the other party in response to the arguments presented in an initial motion, not to create new arguments to which the other party does not have an opportunity to respond. In any event, the argument raised is wholly without merit and warrants no further consideration.

Defendant was provided an opportunity to file motions raising any argument he wished to make by the motion filing deadline of January 29, 2010. His time for filing motions expired over four months ago and the court will not entertain any additional pretrial motions. This case is set for jury selection and trial

on June 28, 2010, and it will proceed as scheduled. Defendant's proposed voir dire and requested points for charge remain due on June 18, 2010.

A handwritten signature in cursive script, reading "Gustave Diamond", written over a horizontal line.

Gustave Diamond
United States District Judge

cc: Shaun E. Sweeney
Assistant U.S. Attorney

Edward Siceloff

Marketa Sims
Assistant Federal Public Defender (stand-by counsel)